

**The Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Administrative Office
Two Center Plaza, Suite 210
Boston, MA 02108**

**Probate and Family Court Law Clerk
Position Description and Application
September 1, 2005 - August 31, 2006**

Posting Dates: July 15, 2004 through October 1, 2004

Position Description: A judicial clerkship in the Massachusetts Probate and Family Court offers an exciting and rewarding environment in which to begin a legal career. The Probate and Family Court hears cases on subjects relating to all aspects of a person's life, from birth to death. As a result, law clerks in the Probate and Family Court are exposed to a wide variety of family, probate and equity issues, including adoption, paternity, custody, divorce, guardianships, petitions to partition real estate, trust reformations and will contests. The law in these areas is constantly evolving and cases of first impression often confront the court, making a clerkship experience in the Probate and Family Court unique and challenging.

While improving their research and writing skills, law clerks work directly with the Justices, and under the supervision of the Administrative Attorney for Legal Research Services and the Chief Justice, conducting research, drafting findings of fact, conclusions of law, judgments and orders and writing legal memoranda. In addition, in-court opportunities to observe hearings and trials provide law clerks with exposure to courtroom procedure and evidentiary issues.

Law clerks in the Probate and Family Court serve a one-year term. Each spring, a select number of law clerks are invited to return for an additional year.

Law clerks apply to serve in either Eastern or Western Massachusetts, with the majority of opportunities to serve being in Eastern Massachusetts. The law clerks in Eastern Massachusetts are assigned on a rotating basis to three four-month rotations in any of eight divisions: Bristol, Barnstable, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester. Western Massachusetts law clerks are assigned to two six-month rotations in the four western divisions: Berkshire, Hampshire, Hampden, and Franklin. The rotation system gives law clerks the opportunity to work with numerous judges and other court personnel and to gain an understanding of the procedures utilized in different courts.

Position requirements and qualifications: The Probate and Family Court invites well-rounded and distinguished law students, recent law school graduates and practicing attorneys to apply for the clerkship positions. Solid academic credentials are important, however, there are no rigid requirements regarding class rank or standing. Courses in probate and/or family law, research assistantships, prior work experience in the area of probate and family law and clinical placements/internships are considered important and are viewed quite favorably.

The Probate and Family Court seeks applicants who: demonstrate an interest in probate and/or family law; possess an ability to write legal memoranda clearly and concisely; possess knowledge of legal research techniques and court procedures and practices; possess an ability to establish working relationships with Justices; possess an ability to adjust to different courthouse environments and personnel; demonstrate a willingness to commit in writing to serve for the entire one-year term; possess a law degree from an ABA accredited law school as of September 1, 2005, or are statutorily eligible to sit for the Massachusetts Bar Exam; are a resident of the Commonwealth of Massachusetts for the duration of the law clerk term; have access to a motor vehicle for travel to court locations throughout the Commonwealth.

Salary: \$ 43,028.81 annual salary. (Level 16, Step 1).

AFFIRMATIVE ACTION / EQUAL OPPORTUNITY EMPLOYER

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SECTION A: Preparation of the Application Package

Please read the following instructions carefully. Incomplete or late application packages will not be considered.

Each applicant must submit **four sets** (an original and three copies) of the following materials, which will constitute the "Application Package." The application package must be stapled and collated in the following order ("1." on top):

1. **Cover letter**
In a one page cover letter, please explain your interest in a judicial clerkship with the Probate and Family Court. Briefly outline your background, if any, in probate and/or family law. Please indicate whether you are interested in serving in the eastern or western part of the state.
2. **Massachusetts Trial Court Application for Employment Form**
The Trial Court employment application form is available at any Massachusetts state courthouse. The form may also be accessed by clicking [here](#) and then scrolling to "Application, for Employment." The form must be completed in its entirety, unless a section is specifically noted as voluntary.
3. **Resume**
4. **Law School Transcript**
An unofficial transcript may be submitted with the application package. However, prior to the commencement of employment, an official law school transcript is required to verify your final academic record and date of graduation. When submitting the application package, please do not have your law school forward your transcript separately. Your transcript must be included in your application package.
5. **Writing Sample**
Each applicant must submit a writing sample based upon one of the three factual scenarios included in Section C of this application. The writing sample shall consist of a six-page memorandum of law on one of the factual scenarios on pages four through five of this Position Description and Application. Please do not send any other writing sample. Please note the following guidelines:
 - a. Apply only Massachusetts law.
 - b. The writing sample may not exceed six pages. It must be typed and double-spaced.
 - c. The writing sample must be the original work of the applicant and may not be edited by another party.

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SECTION B: Submission of the Application Package

Please submit the completed application package (**four sets, consisting of the original application package and three copies**) to the address below:

PROBATE AND FAMILY COURT ADMINISTRATIVE OFFICE
Attention: Denise M. Fitzgerald, Administrative Attorney, Legal Research Services
Two Center Plaza, Suite 210
Boston, MA 02108

1. The application package as described in Section A must be **postmarked** no later than **Friday, October 1, 2004**. Late application packages will not be considered.
2. Please do not submit an incomplete application package. Amendments or additional information (except for the official law school transcript) will not be accepted. Incomplete application packages will not be considered.
3. Please do not fax any portion of the application package. Faxes will not be considered.
4. Please do not telephone the Administrative Office with inquiries regarding the receipt of your application package. If you would like acknowledgment of the receipt of your application, please include a self-addressed, stamped envelope with your application package. Please allow ten days for the return of the acknowledgment.

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SECTION C: Writing Sample Factual Scenarios

Please choose **one** of the following three factual scenarios upon which to write your memorandum of law to submit as your required Writing Sample. (For specific instructions, please refer to Section A-5 above.)

Question 1

Jessica and Sean met while attending college in Boston, fell in love and were married in 1990 in the western Massachusetts town where Jessica had grown up. The town is located approximately 130 miles from downtown Boston. Immediately after the wedding, the couple moved to Texas so that Sean could enroll in a business school located near his mother. Although Jessica had never left Massachusetts before, she agreed to the move since Sean had missed his mother so much while he was in college and because she knew she could get a job in Texas as a nurse. In 1992, while they were living in Texas, their first child, Meghan, was born. That same year, Sean earned his M.B.A. In 1999, Jessica and Sean had their second child, Nathaniel. In 2000, Sean was offered a job working for a company with offices in Massachusetts. Jessica was hoping that this move would allow the family to be closer to her extended family, including her parents, grandmother, uncles and cousins, that still lived in Western Massachusetts. However, when the family returned to Massachusetts in 2000, to be close to Sean's office, they bought a townhouse in downtown Boston. Jessica was disappointed. The following year, the couple's third child, Samuel, was born. Shortly after Samuel's birth, marital difficulties arose and Jessica filed for divorce. The parties were divorced by the Massachusetts Probate and Family Court in December 2002. In their separation agreement which was incorporated and merged into the divorce judgment, Jessica and Sean agreed that Jessica would have primary physical custody of the parties' three children and remain living in the marital home in Boston with the children, that Sean would have liberal visitation rights and that they would share legal custody. After the divorce, Jessica cared for the three children on a full-time basis. Sean spent time with the children on weekends and often saw the children once or twice during the week. While this arrangement worked for a time, Jessica began thinking that living in Western Massachusetts would be better for her and the children, especially Meghan who had begun to get into trouble at school with the crowd she was hanging out with. Jessica has a number of job prospects as a nurse in Western Massachusetts and her family has offered to care for Nathaniel and Samuel while she is working. Jessica finally decided that it would be best for her and for the children that they move to Western Massachusetts and requested permission from the Probate and Family Court to relocate the children to Western Massachusetts. Upon finding this out, Sean was furious and vehemently opposed the move as it would make spending time with the children very difficult. He then filed a Complaint for Modification seeking physical custody of the children.

Judge Zarinski is unsure of how she should proceed with Jessica's request to relocate and Sean's subsequent Complaint to Modify custody. She has asked you to prepare a memorandum advising her on the law governing the issues.

Question 2

On May 22, 2004, Marta and Lisa were married in Massachusetts after having lived together as same-sex partners for seventeen years. Marta, age 42, is a plastic surgeon with a successful practice located in suburban Boston. Her practice has done well in the last few years and she currently earns \$750,000 per year. Marta has no retirement savings as she has spent much of her earnings since she graduated from medical school paying off her school loan debt. Lisa, age 38, works for a private company, earning \$125,000 per year. Through her employment with this company over the last fifteen years, she has acquired a pension valued at \$150,000. Marta and Lisa each have individual savings accounts; Marta's is valued at \$12,000 and Lisa's is valued at \$16,000.

In 1997, Lisa was artificially inseminated by an anonymous donor and subsequently gave birth to a daughter, Tara. Although Marta never adopted Tara, Marta has been an active participant in all aspects of Tara's life from the day she was born. As her schedule allowed, Marta attended Tara's school events and recitals and picked her up at day care and school.

At the time of the parties' marriage, Marta was pregnant and on June 1, 2004, gave birth to a son, Todd.

In 1994, Marta purchased a home for \$400,000. This home currently has a fair market value of \$800,000 with an outstanding mortgage of \$250,000. Throughout the seventeen years that they lived together, Marta and Lisa shared all of their expenses equally, including but not limited to the mortgage on the home, day care, and tuition for Tara's school. Despite her lower earnings, Lisa never minded contributing equally with Marta as Lisa expects a large inheritance when her elderly parents pass away and sharing the expenses allowed Marta to significantly reduce her school loan debt.

In early July of 2004, Marta decided that she wanted a divorce and filed a Complaint for Divorce in the Massachusetts Probate and Family Court seeking only visitation with Tara. Lisa filed an Answer and Counterclaim seeking a division of the parties' assets, as well as child support for Tara.

As this is a case of first impression, Judge Miner has asked you to review the relevant law and determine the rights of the parties as they relate to custody and visitation of the children, child support for the children and division of assets.

Question 3

Both Harry and Wanda were born into very wealthy families and each had individual wealth of over \$2 million dollars. In 1990, at the age of twenty-two, Harry and Wanda married and moved into a home that had been in Harry's family for many years. Nine months later the couple had their first child. Although they wanted to have another child right away, the couple had trouble conceiving and visited a fertility clinic. The couple received treatments at the clinic and were able to give birth to another child in 1993. At that time, Harry and Wanda mutually agreed to freeze the three remaining embryos for possible future use.

One night, after gazing at their beautiful sleeping children, Harry and Wanda decided that their children need to be protected should anything happen to them and each wrote out a document entitled, "Last Will and Testament." Harry witnessed Wanda's signature on her document and Wanda witnessed Harry's signature on his. Harry's document includes the following statement, "If I die before Wanda, she can have the frozen embryos at the fertility clinic. I know how much having my babies means to her." Harry's document provided financially for the parties' first child only. Wanda's document provided financially for the second child only.

Harry's mother established an inter vivos trust in the late 1970s for the benefit of Harry and, ultimately, his children. This trust was structured so that upon Harry's mother's death, Harry would become the sole trustee and lifetime beneficiary of the trust and then eventually the trust property, the home that Harry and Wanda lived in, would pass to her grandchildren. Shortly prior to her death in 2003, Harry's mother amended the trust, now worth \$2 million dollars.

After Harry's mother's death, difficulties arose in the couple's marriage and they decided to divorce. A judgment of divorce nisi entered on June 30, 2004. Ten days later, Harry died unexpectedly. Shocked by Harry's tragic death, Wanda realized how much she had loved him and wanted to have another of his children. Wanda became implanted with one of the frozen embryos, became pregnant and gave birth to a baby nine months later.

Shortly after the birth of the baby, Wanda initiated proceedings to obtain a share of Harry's estate. Wanda feels that she is entitled to Harry's funds currently valued at \$3 million dollars, as well as the trust property, in order to care for the couple's three children, especially since her individual wealth has decreased. Harry's family is very upset that Wanda is making any claims against Harry's estate and believes that the children should come first.

The judge has asked you to review the relevant law to determine whether Harry's will is valid, to determine what Harry's estate consists of and to determine the rights of the Wanda and the three children to Harry's estate.